

Tentative Rulings for December 4, 2025
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

25CECG01764 *Wells Fargo Bank N.A. v. Key Island, LLC* is continued to Thursday, December 18, 2025, at 3:30 p.m. in Department 503.

25CECG03944 *Michael Lux v. Georgeson Law Office* is continued to Thursday December 18, 2025, at 3:30 p.m. in Department 503.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(34)

Tentative Ruling

Re: **Cruz v. Bibiano**
Superior Court Case No. 24CECG03603

Hearing Date: December 4, 2025 (Dept. 503)

Motion: by Defendant for an Order Compelling Plaintiff's Further Responses to Requests for Production, Set Two

Tentative Ruling:

To grant defendant Oscar Bibiano's motion to compel further responses from plaintiff Frank Cruz to requests for production of documents, set two. Plaintiff shall provide further code-compliant, verified responses to request for production nos. 17-29, 35-49. All further responses shall be served on plaintiffs within 15 days from the date of service of the order by the clerk.

To impose monetary sanctions in the amount of \$560 in favor of defendant and against plaintiff. Plaintiff Frank Cruz is ordered to pay \$560 in sanctions to Proper Defense Law Corporation within 30 days of the clerk's service of the minute order.

Explanation:

Defendant Oscar Bibiano moves for an order that plaintiff Frank Cruz provide further verified responses to Request for Production of Documents, Set Two. The responses at issue were served on September 4, 2025 and accompanied by a flash drive with numerous documents. (Vecchiarelli Decl., ¶ 7, Ex. B, C.) Defendant identified three primary deficiencies with plaintiff's responses and sought further responses from plaintiff to address those deficiencies. Despite meet and confer efforts amended responses have not been served. (*Id.*, ¶¶ 10-19.)

Request Nos. 18-20, 37-38, 40-42, 44-46

Code of Civil Procedure section 2031.280, subdivision (a) states that "[a]ny documents or category of documents produced in response to a demand ... shall be identified with the specific request number to which the documents respond." Plaintiff's responses identify documents, however the documents accompanying the responses are not labelled consistently with the documents identified in the responses. (Vecchiarelli Decl., Ex. B, C.) As such, the responses do not adequately identify the responsive documents as required by Code of Civil Procedure section 2031.280, subdivision (a) and a further response is ordered to request nos. 18-20, 37-38, 40-42, 44-46.

Additionally, with respect to plaintiff's responses to request nos. 42, 44-46, documents are identified in the response but there are no corresponding documents within the production in the folders created for these requests. (See, Vecchiarelli Decl., Ex. C.) Plaintiff is ordered to provide the documents identified within his responses to request nos. 42, 44, 45, and 46.

Request Nos. 17, 21-29, 35-36, 39, 43

A response stating inability to comply with the demand shall include "[a] representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (Code Civ. Proc., § 2031.230.) Such a statement must "also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party." (Code Civ. Proc., § 2031.230.)

The responses at issue state, "No such documents are at this time known to exist." Although the statement adequately conveys why plaintiff is unable to comply with the demand, this response does not indicate whether a diligent search and reasonable inquiry were made in an effort to comply with the demand as required by Code of Civil Procedure section 2031.230. A further statement regarding the party's efforts to comply is ordered.

Sanctions

Defendant seeks a total of \$2,084.90 in sanctions in connection with the motion at bench. Defendant's counsel attests to a total of 8 hours of attorney time spent preparing the moving papers and filing fees of \$60 with an additional cost of \$24.95 assessed by its attorney service. (Vecchiarelli Decl., ¶ 22.) The court recognizes the time expended in preparing the separate statement, however the deficiencies were largely identical and deal with straight forward issues of code compliance. The court finds it reasonable to award sanctions in the reduced amount of \$560.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JS **on** 12/2/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Hackett, et al. v. Fulton Plaza, LLC, et al.***
Superior Court Case No. 22CECG03374

Hearing Date: December 4, 2025 (Dept. 503)

Motion: by Plaintiffs to Set Aside Dismissal

Tentative Ruling:

To grant. The dismissal entered on March 28, 2025, is set aside on the grounds of “mistake, inadvertence, surprise or excusable neglect.” (Code Civ. Proc., § 473, subd. (b).). A Case Management Conference hearing is set for Tuesday, March 3, 2025, at 3:30 p.m. in Department 503.

Explanation:

Attorney Affidavit of Fault:

The court is empowered to relieve a party “upon any terms as may be just ... from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc. § 473, subd. (b).) Where a motion seeking this relief is based on an “attorney affidavit of fault,” the relief is mandatory. Otherwise, relief is discretionary. A limitation on the mandatory relief is that the court may deny relief if it finds the default or dismissal “was not in fact caused by the attorney's mistake, inadvertence, surprise or neglect” (e.g. where the attorney is attempting to “cover up” for the client). (*Id.*)

However, mandatory relief is only available where the attorney failed to oppose a motion to dismiss, not where the dismissal results from the attorney's conduct preceding the motion to dismiss. [*Graham v. Beers* (1994) 30 Cal.App.4th 1656, 1661 [finding that where an attorney's delay in service of summons or other negligent failure to prosecute an action results in dismissal under Code Civ. Proc., § 583.410, the attorney's affidavit of fault does not compel relief from the dismissal].)

Here, it is clear that the court's dismissal of the action was caused by plaintiffs' counsel, Richard E. Lehrfeld's repeated inadvertences. The court dismissed the action because plaintiff (or plaintiff's counsel) failed to appear at the Case Management Conference hearing and the subsequent Order to Show Cause hearing. Had Mr. Lehrfeld properly noted the date for the CMC hearing or was not injured on the day of the OSC hearing, Mr. Lehrfeld would have made an appearance to at least one of the hearings, thus precluding the court from dismissing the action. To the extent that defendants argue that Mr. Lehrfeld's declaration fails to include any indication demonstrating that Mr. Lehrfeld intended to appear at the OSC notwithstanding his injury, this intent may be implied simply by Mr. Lehrfeld's execution of the declaration in support of a motion to set aside the dismissal. Further, while it can be argued that plaintiffs had partial responsibility

to ensure that they were aware of their respective court dates, it appears the notices from the court were received by Mr. Lehrfeld's office rather than by plaintiffs. As such, it is clear that Mr. Lehrfeld's mistake at least proximately caused the dismissal of the action.

While defendants contend that mandatory relief is not available, as the action was dismissed for a failure to prosecute, this is not expressly indicated in either the March 28, 2025 OSC Minute Order dismissing the case or January 21, 2025 CMC Minute Order. (See the CMC Minute Order, filed on Jan. 21, 2025 and the OSC Minute Order, filed on March 28, 2025.) Nor do defendants provide any evidence to show that the dismissal was for any ground other than plaintiffs' failure to appear. Absent such showing, plaintiffs are entitled to mandatory relief with the submission of their counsel's affidavit of fault.

Discretionary Relief:

Where relief is based on a showing of mistake, inadvertence, surprise, or excusable neglect, the party moving for relief must show specific facts demonstrating that one of these conditions was met. (Code Civ. Proc., § 473, subd. (b); *Hopkins & Carley v. Gens* (2011) Cal.App.4th 1401, 1410.) Relief may be granted on a showing of mistake by a party or attorney. Such mistake may be one of fact or law, but in either case, it must be material. Relief is proper where the party (or lawyer) was mistaken as to some fact material to the party's duty to respond, by reason of which the party failed to make a timely response. (*Lieberman v. Aetna Ins. Co.* (1967) 249 Cal.App.2d. 515, 523-524.) Here, Mr. Lehrfeld failed to appear at both the CMC and OSC hearings, because the CMC hearing was inadvertently not placed on counsel's individual calendar. Subsequently, Mr. Lehrfeld was mistaken as to his duty to appear, which is a proper ground for relief.

Moreover, the law favors judgments on the merits. Where dismissals are the procedural equivalent on a default; i.e., those which deprive plaintiffs of their day in court, relief is favored. (*Leader v. Health Indus. Of America, Inc.* (2001) 89 Cal.App.4th 603, 618.) Here, the dismissal of plaintiffs' action does deprive plaintiffs of their day in court and the policy is to grant relief.

Procedural Requirements:

The application "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted." (Code Civ. Proc. §473, subd. (b).) But this requirement is not jurisdictional, and substantial compliance may suffice. (*Carmel, Ltd. V. Tavoussi* (2009) 175 CA4th 393, 403 [substantial compliance found where counsel offered proposed answer at motion hearing rather than serving it with moving papers.]; *Austin v. Los Angeles Unified School Dist.* (2016) 244 CA4th 918, 933 [plaintiff substantially complied with the "attached-pleading requirement" by offering facts and legal arguments in her motion.].) Given that, ordinarily, there is not a pleading to be filed by plaintiffs at this stage of the proceedings, plaintiff are excused from this requirement.

Therefore, the motion to set aside the dismissal entered on March 28, 2025 is granted.

(03)

Tentative Ruling

Re: **D.L. v. County of Fresno**
Case No. 22CECG02530

Hearing Date: December 4, 2025 (Dept. 503)

Motion: Defendant Aspiranet's Motion to Strike Portions of First Amended Complaint

Tentative Ruling:

To continue the hearing on the motion to strike until January 15, 2026 at 3:30 p.m. in Department 503. To order the parties to engage in further meet and confer efforts in person, by phone, or by videoconference as required by statute. To order defense counsel to file a new declaration regarding the meet and confer efforts by the close of business on January 9, 2026.

Explanation:

Under Code of Civil Procedure section 435.5, "Before filing a motion to strike pursuant to this chapter, the moving party shall meet and confer *in person, by telephone, or by video conference* with the party who filed the pleading that is subject to the motion to strike for the purpose of determining if an agreement can be reached that resolves the objections to be raised in the motion to strike." (Code Civ. Proc., § 435.5, subd. (a), *italics added*.) However, "A determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike." (Code Civ. Proc., § 435.5, subd. (a)(4).)

Here, defense counsel has provided her declaration regarding her efforts to meet and confer with plaintiff's counsel. However, it appears that defense counsel simply sent an email to plaintiff's counsel regarding the alleged defects in the first amended complaint rather than meeting and conferring in person, by phone, or by videoconference. (Lawrence decl., ¶¶ 4, 5, and Exhibits B, C, and D thereto.) Likewise, plaintiff's counsel only sent an email in response to the meet and confer letter from defense counsel. (Lawrence decl., Exhibit D.) Therefore, it does not appear that defense counsel met and conferred in person, by phone, or by videoconference as required by section 435.5.

On the other hand, the court may not simply deny the motion to strike due to the inadequate meet and confer efforts. Instead, the court intends to continue the matter and order the parties to engage in further meet and confer efforts in person, by phone, or by videoconference. Defense counsel must then file a supplemental declaration regarding the meet and confer efforts before the continued hearing date.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

(27)

Tentative Ruling

Re: ***Deeasha Eddings v. Saint Agnes Medical Center***
Superior Court Case No. 22CECG03112

Hearing Date: December 4, 2025 (Dept. 503)

Motion: Compel Initial

Tentative Ruling:

This motion is taken off calendar as it does not appear from the court's record that moving papers were filed.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JS on 12/3/2025.
(Judge's initials) (Date)